THE SUTHERLIN NATIONAL BANK, PLAINTIFF IN ERROR AND APPELLANT,

vs.

THE CITY OF SUTHERLIN.

REPLY BRIEF OF PLAINTIFF IN ERROR.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1898.

No. 133.

THE GUTHRIE NATIONAL BANK, PLAINTIFF IN ERROR AND APPELLANT,

vs.

THE CITY OF GUTHRIE.

REPLY BRIEF OF PLAINTIFF IN ERROR.

First. There is no merit in the claim that the amount in controversy is not sufficient to give this court jurisdiction. Under the terms of the organic act of the Territory, 26 Stats., 81, the amount necessary to give this court jurisdiction on appeal or error is fixed at five thousand dollars, and interest is not excluded (*U. S. vs. Daniel*, 12 Peters, 32; *Woodward vs. Jewell*, 140 U. S., 247).

The interest on the amount in controversy is computed under the statute, Appendix No. 1, Plaintiff's Brief, "at the rate of 6 per cent. per annum from the date of the allowance by the commission or referees."

The Record, page 4, shows that the report of the commission was filed in the district court on the 1st day of Septem-

ber, 1891, and the judgment of the district court was entered on the 2d day of April, 1896, four and one-half years afterwards. (See Record, page 28.)

The decision of the supreme court of the Territory (Record, page 33) was entered on the 11th day of June, 1897, more than five and one-half years after the commission allowed the claims owned by the plaintiff in error. The writ of error and appeal were sued out and taken on the same day, and under the authorities last cited the interest computes to this time, or five and one-half years.

Second. There is no merit in the contention that the necessary parties are not before the court to enable it to review the case. The proceeding in the court below presented a several action by the holder of each individual claim, and they had nothing in common except a common forum for the enforcement and determination of their rights. The other claimants are all wholly unaffected by any steps that can be taken in this case. There was no necessity for their severance cases; they were severed already, in fact (Milner *vs.* Meek, 95 U. S., 252; Gilfillan *vs.* McKee, 159 U. S., 333; Polk *vs.* Corell, 130 Neb., 884; Appeal of Adamson, 110 Pennsylvania Stat., 459).

The claim that the Guthrie national bank nowhere appeared as plaintiff in the court below is not in accordance with the facts disclosed by the record (see bottom of page 4 of Record, top of page 7, top of page 13, bottom of page 28), from which it is clear that the Guthrie national bank had sufficient status as a party claiming in the court below to protect its interests and obtain a hearing upon the merits.

Third. The claim that the act of the legislature is special legislation is untenable (City of Guthrie *vs.* Losey, 1st Oklahoma Ter., 188). The conditions existing in the city of Guthrie were anomalous and obtained in no other locality in the Territory. It is true that similar provisional governments existed within the present territory of Oklahoma City,

which bequeathed no debts to successors; also in the city of Lisbon, or Kingfisher, which left certain debts behind, but which its successor, the village of Kingfisher, voluntarily liquidated and assumed, and which assumption was legalized and ratified by chapter 15 of the Statutes of Oklahoma of 1890. The various subdivisions of the city of Guthrie were more elaborate in their operations than the other municipalities; they secured water works, improved the streets, maintained public schools, and were, possibly, more prodigal in their expenditures; and the legislature, in view of the unwillingness of the municipality to assume the indebtedness contracted by the provisional governments, manifestly hesitated in imposing such debts absolutely as liabilities on the city without the judicial determination as to their character, and the result of the investigation of the commission certainly justified the legislature in its course, as it is shown by the Record, page 7, that the disallowance of claims made by the referees far exceeded the amount of the claims actually allowed. The conditions existing at Guthrie being therefore such as to make them a separate class, and in a different situation from that of any other municipality in the Territory, it was competent for the legislature to declare the taxpayers of each subdivision of such city liable for the payment of *bona fide* debts contracted for their benefit and with their consent by the provisional government of their own creation. The case in many of its features would seem to be on a parallel with the facts in Stark *vs.* Starr, 94 U. S., 477, and Stark *vs.* Starr, 6 Wallace, 402.

Fourth. The basis of the claim of the defendant in error that the act of the legislature in question does not constitute due process of law is the assertion of a very narrow and irrational construction of that act. The idea of the legislature in the passage of this act seems to be manifestly to assimilate the case to any other proceeding of a court of chancery where a voluminous matter of accounting is involved,

and that they invoked a well-known and established power of the court to call to its aid the assistance of masters or referees for the purpose of aiding it and facilitating in the work of the judicial determination as to what claims against the provisional cities ought in equity and good morals to be charged against the tax-payers.

And in this connection permit us to correct both the counsel of the defendant in error in their briefs and the court below in its view that the *de jure* municipality of the city was sought by this act to be charged with this liability. The only personal liability imposed upon the city of Guthrie by this act is the payment of the expenses of the reference to the commissions and the master, and the rest of their duties in the premises are merely ministerial, namely, the issuing of certificates and warrants of indebtedness to the holders of the claims finally ascertained by the district court to be properly payable, and the levying of an annual tax in the proper subdivisions of the city to pay its proportion of the debts so charged against it.

It was also manifestly the intention of the legislature under the act to give the court, upon the incoming of the report of the master, all of the powers that the court of chancery possesses, and from the language of the act it is also quite evident that the terms "district judge" and "district court" are used interchangeably.

In this view of the law, even if the authorities cited by the counsel upon the question of due process of law were otherwise applicable, they would be entirely beside the case, for here is evident every element of due course of procedure which is known to the law, which hears before it condemns.

Respectfully submitted.

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